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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 952

In the Matter

—of—

PATIO CAFE, INC.,

Bankrupt.

EMPIRE STATE CHAIR CO., INC.,

Petitioner,

—against—

GEORGE J. BELDOCK, Trustee in Bankruptcy,

Respondent.

APPELLANT'S REPLY BRIEF.

This reply brief is being submitted pursuant to leave granted by the Clerk of this Court.

The Respondent in his brief argues that the filing of the conditional sales agreement herein was not in conformity with Section 65 of Article 4 of the Personal Property Law of the State of New York, in that by reason of the failure to annex thereto a copy of the plans and specifications it was not a copy of the conditional sales agreement. Unless such plans and specifications were a vital part of the con-

ditional sales agreement, the inference could well be drawn from the argument of the Respondent that any variation between the contract as executed and the copy as filed—even to the extent of failing to cross a “t” or to dot an “i” would result in the copy as filed being held not to be a copy of the contract as executed. This, of course, is not true.

Assuming that the contract as executed had failed to have annexed to it the plans and specifications, would such contract still be a valid conditional sales contract under the law of the State of New York? We think it would.

The Respondent does not contend that under the law of the State of New York a description is required to make this conditional sales agreement valid.

Under the state of the law as it exists in New York, therefore, it would be sufficient if a conditional sales agreement contained the names and addresses of both parties, the location of the chattels, the amount involved and an agreement for the reservation of title in the vendor. Under such contract one would be bound to know that the vendor claimed a lien upon some chattels in the premises. That is all that is required by the law of the State of New York. Yet this contract went further and, by its reference to plans and specifications, provided the “key to the description”.

It is respectfully submitted that if this honorable Court finds that no description of the chattels is required under the law of the State of New York that it must find that the Respondent was not prejudiced by the failure to file that portion of the contract which described the chattels.

The case of *Diamond Iron Works v. Werly*, 135 Wash. 228, 237 Pac. 313, does not turn upon the question of the sufficiency of the description, but it does turn upon the question as to whether or not the filing was sufficient in a case in which the plans and specifications were not annexed to the

contract as filed. Although the State of Washington did not adopt the Uniform Conditional Sales Act *in toto* it did in effect adopt the Act. That case held clearly that the failure to file a copy of the plans and specifications did not constitute a failure to file a copy of the contract and predicated its determination upon the ground that the State of Washington did not require a description of the chattels.

For the foregoing reasons as well as upon the grounds set forth in the Appellant's original brief it is respectfully submitted that the order of the Circuit Court should be reversed.

Respectfully submitted,

HAROLD FORSTENZER,
Counsel for Appellant.